

No. 9/7/86-6Lab./10142.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Deputy Director, Agriculture Department, Haryana, Rohtak.

BEFORE SHRI B. P. JINDAL,
PRESIDING OFFICER,
LABOUR COURT, ROHTAK

Reference No. 169 of 1985

between

SHRI RAM CHANDER, WORKMAN AND THE
MANAGEMENT OF M/S DEPUTY DIRECTOR,
AGRICULTURE DEPARTMENT, HARYANA,
ROHTAK

Shri V. S. Singal, A.R. for the workman.

Shri Gulab Singh, A.D.A., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Ram Chander and the management of M/s Deputy Director, Agriculture Department, Haryana, Rohtak, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 42080-85, dated 11th October, 1985:—

Whether the termination of services of Shri Ram Chander is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent since 25th March, 1982 as a Mali and all through his work and conduct was satisfactory but the respondent chose to terminate his services unlawfully

with effect from 1st April, 1985 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the detailed reply filed by the respondent, preliminary objections taken are that the respondent department is not an "industry" and so, the reference is bad in law and secondly that the applicant was employed in the Desert Development Programme Scheme funded by the Central Government and the funds were made available to the respondent department and the said Scheme was to be executed through D.R.D.A., Rohtak, which was implemented in pure exercise of sovereign function of the State Government. This scheme was floated under the anti-poverty programme undertaken by the State Government to help the poor and marginal farmers to cross the poverty line and with a view to increase their earnings under this scheme fruit plants and vegetable seedlings were supplied to the small and marginal farmers free of cost and that there was no systematic activity, which was geared to the production of goods and service to the community at large. It is further alleged that there was no element of trade or business or any other activity analogous to it. On merits, it is admitted that the petitioner was employed as Mali on 25th March, 1982 and his services were terminated on 5th June, 1982 and was re-appointed on 1st February, 1983 under the Desert Development Programme Scheme on six months basis and since the said scheme had been discontinued, with effect from 31st March, 1985 for want of funds, termination of service of the petitioner with effect from 1st April, 1985 was justified.

4. On the pleadings of the parties, the following issues were settled for decision on 27th February, 1986:—

- (1) Whether the respondent is not an "industry" as defined in section 2(i) of the Industrial Disputes Act, 1947?
- (2) As per terms of reference.

5. The petitioner appeared as WW-1 and the management examined MW-1 Shri Bhim Sain, MW-2 Shri Sukh Ram, Cashier. My findings on the issues framed are as below:—

6. The learned ADA contended on behalf of the respondent that since the scheme under which the petitioner was employed was funded

by the Central Government and the said scheme was being executed through D.R.D.A. by the Agriculture Department, Government of Haryana, in exercise of sovereign function of the State Government, the respondent cannot be held to be an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947. There is a fallacy in his contention on the face of it. His contention stand negatived from the observations made by their Lordships of the Supreme Court of India in the often quoted authority reported in 1978 S.C. 548 *Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others*. From this authority a pointed reference can be made to paragraph number 49 of the judgement which I quote *in extenso* to bring into full view, the ambit and amplitude of the term "industry" as given by the Hon'ble Supreme Court of India:—

"A panoramic view of the Statute and its jurisprudential bearings has been projected there and the essential of an industry decocted. The definitions of employer [Section 2(g)], industry [Section 2(j)], industrial dispute [Section 2(k)], workman [Section 2(e)] are a statutory dictionary, not peculiar parlance. It is plain that merely because the employer is a Government Department or a Local Body (and *a fortiori*, a statutory board, society or like entity) the enterprise does not cease to be an "industry". Likewise, what the common man does not consider as "industry" need not necessarily stand excluded from the statutory concept. (And *vice versa*). The latter is deliberately drawn wider, and in some respects narrower, as Chandrasekhra Aiyar, J., has emphatically expressed:

"In the ordinary or non-technical sense, according to what is understood by the man in the street, industry or business means an undertaking where capital and labour co-operative with each other for the purpose of producing wealth in the shape of goods, machines, tools, etc., and for making profits. The concept of industry in this ordinary sense applied even to agriculture, horticulture, pisciculture and so on and so forth. It is also clear that every aspect of activity in

which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry, when we have regard, for instance, to the rights and duties of master and servant, or of a Government and its Secretariat, or the members of the medical profession working in a hospital, it would be regarded as absurd to think so, at any rate the layman unacquainted with advancing legal concepts of what is meant by industry would rule out such a connotation as impossible. There is nothing, however; to prevent a statute from giving the word "industry" and the words "industrial dispute" a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity."

7. In view of the clear observations in the authority quoted above, I need not dilate any further on this issue, because Desert Development Programme Scheme under which the petitioner was employed was floated for the benefits of small and marginal farmers to help them cross the poverty line by supplying them free of cost vegetable seedlings and saplings. The petitioner was employed in a nursery where seedling and saplings used to be grown. It was systematic economic activity though there was no profit motive. So, there is no difficulty in holding that Desert Development Programme Scheme under which the petitioner was employed was an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947, and as such, this issue goes against the respondent.

ISSUE NO. 2:

8. It is admitted case of the respondent that services of the petitioner were terminated on 1st April, 1985. It was pleaded on behalf of the respondent that when for want of funds, the scheme was wound up the respondent had no choice to terminate the services of the petitioner. Shri Bhim Singh, Subject Matter Specialist, of the Agriculture Department, Government of Haryana, also appeared in the

Court as MW-1 admitted in the Court during the course of arguments that the said scheme has not been dis-continued but its maintenance has been taken by the Government of Haryana, Department of Agriculture. He further admitted that the nursery where the petitioner was employed is still in existence, though no more under the control of D.R.D.A., Rohtak. Admittedly the petitioner had put in 240 days of actual work with the respondent during the last 12 calendar months from the date of his termination. Admittedly no prior notice or retrenchment compensation as envisaged under section 25F was given/paid to the petitioner. So, his termination squarely falls within the ambit of term "retrenchment" as defined in section 2(oo) of the Industrial Disputes Act, 1947, which could not have been brought about by the respondent without complying with the mandatory provision of section 25F of the Industrial Disputes Act, 1947. So, the termination of services of the petitioner was illegal and void *ab initio*, which cannot be sustained. Services of the petitioner were terminated on 1st April, 1985 and he raised the demand notice on 10th May, 1985. So, there was no delay on the part of the petitioner in raising the demand notice and as such, he cannot be deprived from the benefits of back wages. So, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

The 16th October, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

Endorsement No. 169-85/1559, dated the 10th November, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

The 16th October, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

The 16th December, 1986.

No. 9/7/86-6Lab./10143.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Parle Biscuits Pvt. Ltd., Bahadurgarh (Rohtak).

BEFORE SHRI B. P. JINDAL,
PRESIDING OFFICER,
LABOUR COURT, ROHTAK

Reference No. 74 of 84

between

SHRI RAM KISHAN, WORKMAN AND
THE MANAGEMENT OF M/S. PARLE BIS-
CUITS PVT. LTD., BAHADURGARH
(ROHTAK)

Shri S. S. Gupta, Authorised Representative,
for the workman.

Shri M. Kaushal, Authorised Representative,
for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Ram Kishan and the management of M/s. Parle Biscuits, Pvt. Ltd., Bahadurgarh (Rohtak), to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 18928-33, dated 15th May, 1984 :—

Whether the termination of services of Shri Ram Kishan is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Helper on monthly wages of Rs. 425 and was office Secretary of a registered trade union and that the management choose to terminate his services unlawfully, with effect from 8th October, 1983 on the basis of trumped up charges. into which, no enquiry was held and that the reason

for his termination was that his union activities irked the management. So, he has challenged his order being illegal and unlawful and has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the applicant was dismissed from service as he committed theft and so, the management lost confidence in him and that acts of theft committed by him fall in the category of major mis-conduct and so, order of dismissal was justified. On merits, **it is alleged that the petitioner was employed on 22nd July, 1981 and that there were numerous complaints against the working and behaviour of the petitioner from his immediate seniors and co-workers.** The petitioner was also in the habit of going on absenteeism during factory hours solely with the intention of whiling away his time and various oral warnings were given to him without any effect. Residuary pleas taken are that the petitioner remained gainfully employed after his dismissal and that the Claim Statement has not been presented by duly authorised person.

4. On the pleadings of the parties, the following issues were settled for decision on 22nd October, 1984:—

- (1) Whether the services of the applicant were dismissed? If so, to what effect? OPR.
- (2) Whether the Claim Statement has been filed by a authorised person? OPR.
- (3) Whether the workman remained gainfully employed after termination? OPR.
- (4) As per reference.

5. The management examined MW-1 Shri V. D. Nakade, Works Manager, Shri B. D. Sharma, Security Officer as MW-2, Rama Kant Pathak, as MW-3, Shri Atul Arora, Quality Control Officer as MW-4 and lastly Shri Jagat Singh Rana as MW-5. Workman appeared as his own witness as WW-1.

6. The learned Authorised Representatives of the parties heard. My findings on the issues

framed are as below :—

ISSUE NO. 2:

7. The Claim Statement filed in the Court is not signed by the petitioner. It is signed by Authorised Representative Shri R. S. Dahiya, but the same is in complete consonance with the demand notice, copy of which, has been received alongwith the order of reference. The same is admittedly signed by the petitioner. So, it is hardly matter that the Claim Statement filed in the Court is not signed by the petitioner. In view of this stand, the learned Authorised Representative of the respondent was lukewarm in pressing this issue.

ISSUE NO. 3:

8. The petitioner when he appeared in the Court as WW-1 admitted that after dismissal from service, he had opened a shop at Bahadurgarh. He was not able to state as to when the shop was opened by him and what were his earnings. Even if, it be held that the petitioner was running a shop after his dismissal, that would not go to dilute the wages in case of reinstatement, because the latest judicial pronouncement are inclined to ignore such earnings as solatium. So, this issue, the respondent must fail.

ISSUES NO. 1 AND 4:

9. These issues being akin in nature have been clubbed together for discussion. Copy of the termination order is Exhibit W-3. The same contains detail of the various allegations against the petitioner. Exhibit W-1 (no date mentioned) is a letter alleged to have been written by the petitioner to the management voicing certain grievances of the workers working in the Waxing Department. Exhibit W-2 is a letter, dated 26th September, 1983 alleged to have been written by the petitioner to the management on the same lines. On the other hand, the management has placed on record a plethora of complaints made against the workman by his immediate Supervisor and the management has adduced supportive evidence to prove these complaints. The star witness of the management is Shri V. D. Nakade, Works Manager, who was examined as MW-1. He has given a photographic account about the activities, working behaviour of the petitioner. Shri Nakade stated that the petitioner was employed as un-skilled worker on 22nd July, 1981 and that prior to 1st July, 1981 he was working as a Production Manager in the respondent/

Company and received complaints, Exhibit M-1 and Exhibit M-2 from Atul Arora (who was examined as MW-4). These complaints related to the habit of the petitioner to avoid work and mis-behaviour with the seniors. After receiving these complaints Shri Nakade counselled the petitioner to behave properly and work with sincerity. There was another complaint regarding the habit of the petitioner to come late resulting in stoppage of production and so, memo, Exhibit M-3 was served upon the petitioner. Shri Jagat Singh Rana (who was examined as MW-5) was the Operator of the machine with the petitioner, who was employed as Helper. Shri Rana made a complaint against the petitioner, which was forwarded by the Production Supervisor Shri Rama Kant Pathak (who was examined as MW-3). Shri Nakade further stated that after issuance of memo, Exhibit M-1 the petitioner did not show any improvement in his behaviour, rather he started instigating other workmen to harass the management. Thereafter followed complaints, Exhibit M-6 to Exhibit M-9. At this stage Shri Nakade felt that his soft behaviour towards the workman was being unfavourably viewed by the management and so, he was constrained to transfer the workman to the loading and un-loading department, where also, the petitioner was very quick in creating chaos resulting in delayed loading of trucks and complaints from the customers regarding shortage of goods received. He further stated that he also received complaint regarding theft but he did not take any action unless he got the matter probed. So, the enquiry was entrusted to Shri B. D. Sharma, Security Officer, who made a detailed report after examining other co-workers from the loading and un-loading department. His report is, Exhibit M-11. Then the order of dismissal, Exhibit W-3 followed. Supportive oral evidence was adduced by the management in the person of Shri B. D. Sharma, Security Officer as MW-2, who stated that report, Exhibit M-11 was made by him after making detailed discrete enquiry from the workers of loading department, who were mixed up with the petitioner in committing acts of theft. Alongwith his report Shri Sharma sent to the management recorded statements of other workers. MW-3 Shri Rama Kant Pathak stated that the petitioner was a Helper at the machine alongwith one Operator Shri J. S. Rana and that work and conduct of the petitioner was not satisfactory, who lacked all interest in work and that he received complaints, Exhibit M-4/A, M-5/A, M-8 to M-10,

MW-4 is Atul Arora, Quality Control Officer, who stated that he was employed in the respondent in the year 1982 and as such, he knew the petitioner, whose work and conduct was most unsatisfactory and that all his persuasions with the petitioner to behave properly failed and that complaints, Exhibit M-1/A and M-2/A were made by him. MW-5 is Shri Jagat Singh Rana, Waxing Operator, who stated that the petitioner was working under him as a Helper and that during the hours of peak load, the petitioner will excuse himself out for pissing or taking tea and will return at his will resulting in loss of production and that the petitioner used to instigate other helpers not to work properly and he tried to persuade the petitioner, to work sincerely but failed and so, he made reports against him, which are, Exhibit M-5/A and M-6 to M-9.

10. On the other hand, when the petitioner appeared as WW-1 admitted receipt of various memos and also the fact that there were numerous complaints against him. He also admitted that he had no personal enmity with the Supervisor of the Waxing Department. He also admitted that S/Shri Rajbir, Baljeet, Jai Bhagwan, Suresh and Jai Singh were his co-workers in the loading and un-loading department and that he had no enmity with him. He also admitted that regarding theft at the time of loading, enquiry was held by Shri B. D. Sharma, and that he also made enquiry from him. So, most of the allegations made against the petitioner have been virtually admitted by him and the refrain of the contentions raised on behalf of the petitioner was that the management should have held a proper domestic enquiry into the various acts of omission and commission against the petitioner and that most of the allegations are conjectural in nature and that by transferring the petitioner from the Printing and Waxing Section, the management impliedly condoned his alleged acts of mis-behaviour, which cannot form part of the circumstances leading to the order of dismissal. It was further argued that no report of the alleged acts of theft was made by the respondent to the police. In support of these contentions, Shri Gupta learned Authorised Representative of the petitioner cited 1978 Lab. I.C. 1699 *Central Co-operative Bank Ltd., Eluru vs. Labour Court, Guntur and another*. In this authority their Lordships held that the master is the best Judge of the circumstances under which, he may choose or elect to exercise or

refrain from exercising powers or right of dismissal and that he can waive that right after condoning the mis-conduct but condonation to be effective, operative and valid must be unequivocal, unqualified and un-conditional. Simply because the petitioner was transferred to the loading and un-loading section will not go to show that there was any condonation or waiver of the acts of mis-behaviour and insubordination committed by him while working in the Printing and Waxing Section. Transfer of the petitioner from the Printing to the loading section was a desperate act on the part of the respondent in the belied hope that the petitioner may mend his ways.

11. Shri Gupta also cited 1975 II LLJ 174 *M/s. Lakshmiratan Cotton Mills Co. Ltd., and its Workmen* and 1964 I LLJ 436 *between Northern Dooars Tea Company Ltd., and Workmen of Dem Dima Tea Estate*. These authorities have not got the remotest bearing upon the facts of the present case.

12. No direct evidence of theft could be culled by the management. The management got a preliminary probe conducted from Chief Security Officer Shri Sharma regarding acts of pilferage being committed in the loading section after posting of the petitioner there. Shri Nakade, Works Manager, stated that before the posting of the petitioner in the loading section, it was a smooth affair. There was no complaint of shortage from the customers which started trickling in after the posting of the petitioner. Even if, the management had reported the matter to the police, the same could have hardly made any head way during the investigation, because the police force is usually reluctant to register cases of theft. So, the management was justified in getting the matter probed through its Chief Security Officer, who not only made enquiries from the petitioner but also from the other workers of the loading section, who were mixed up with him in these nefarious activities. Shri Kaushal, learned Authorised Representative of the respondent on the strength of law laid down 1986 LLJ II 85 *between T. Seeralan and Presiding Officer II Additional Labour Court and another*, contended that even if, the management instead of launching criminal proceedings choose to proceed by domestic enquiry, there is very little scope for generosity to be shown or bring into

existence minor punishment for such indiscretion or dereliction in duties. In such cases, plea for reinstatement is untenable and the punishment

of dismissal imposed is on the concessional side. Shri Kaushal further relied upon 1978, FLR 36 *Municipal Corporation of Greater Bombay vs. P. S. Malvenkar S.C. 491*, wherein their Lordships of the Hon'ble Supreme Court of India held that no distinction can be made that in cases where domestic enquiry is invalid or defective and those, where no enquiry (as in this case) has in fact been held as required by the relevant Standing Orders and in either case, it is open to the employer to justify his action before the Labour Court by adducing all relevant evidence before it. So, there is no force in the contention raised on behalf of the petitioner that since no domestic enquiry was held, order of dismissal could not have been passed, specially when the same seems to be justified in view of the evidence adduced by the management, both oral and documentary, justifying his action in passing the said order.

13. Mere is a workman, who was wayward in his behaviour. He had scant regard for his seniors. Contumacy was his way of life. All efforts to persuade him to mend his way had no effect upon him. Even after his transfer from the Waxing and Printing Department to the Loading and Unloading Section, the petitioner created chaos in a section which had a smooth sailing earlier. He started indulging in acts of pilferage in connivance with his co-workers (who have since left the respondent concern). Such a worker is a hazard to the industrial peace and development and his reinstatement by this Court by interfering with the order of dismissal under section 11A of the Industrial Disputes Act, 1947, would be un-called for. So, there is no escape from the conclusion that the order of dismissal was justified and no interference by this Court is required. The workman is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

The 20th October, 1986.

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak,

Endorsement No. 74-84/1560, dated the 10th November, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak,